

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CYNTHIA HALL,

Plaintiff,

v.

MORTGAGEIT, INC., *et al.*,

Defendants.

Case No. 2:11-CV-02051-KJD-CWH

ORDER

Presently before the Court is the Motion to Dismiss (#12) of Defendants Countrywide Home Loans, Inc. and Mortgage Electronic Registration Systems, Inc. (collectively “Defendants”). Plaintiff Cynthia Hall filed a response in opposition (#19) to which Defendants replied (#28).

I. Background and Procedural History

In October 2008 Plaintiff filed a lawsuit against Mortgage Electronic Registration Systems, Inc. (“MERS”), Countrywide Home Loans (“Countrywide”), and “HBSC Bank.” *See* 2:08-cv-01605-LDG-LRL. Plaintiff’s complaint included claims for fraud, fraud in lending practices, civil conspiracy, quiet title, slander of title, and a request for declaratory relief including setting aside the foreclosure sale. Each of these claims was related to the loan and deed of trust on Plaintiff’s property located at 1361 Cranston Ct., Las Vegas, Nevada (the “Property”). On September 7, 2010 Judge

1 Lloyd D. George dismissed Plaintiff's claims for failure to prosecute. *See* 2:08-cv-01605-LDG-LRL
2 Dkt. #24.

3 In October 2009, while Plaintiff's first complaint was pending, Plaintiff filed a second
4 complaint alleging similar claims against Mortgageit, Inc., Chicago Title, Countrywide, HSBC Bank
5 USA, N.A. and MERS. The allegations involved the same property, loan, deed of trust and
6 foreclosure sale. *See* 2:09-cv-02233-JCM-GWF. Defendants filed a motion to dismiss pursuant to
7 Fed. R. Civ. P. 12(b)(6). Judge James C. Mahan dismissed Plaintiff's action because the complaint
8 failed to state valid claims and determined that amendment would be futile. *See* 2:09-cv-02233-JCM-
9 GWF Dkt. #64.

10 Instead of appealing Judge Mahan's decision, Plaintiff filed a third Complaint (the
11 "Complaint") against Mortgageit, Inc., Chicago Title, Countrywide, HSBC Bank USA, N.A., MERS
12 on August 8, 2011, in this Court. The Complaint alleges wrongful foreclosure, fraudulent
13 misrepresentation, and seeks declaratory and injunctive relief. The allegations relate to the same
14 property, the same loan, the same deed of trust, and the same foreclosure of sale as the prior two
15 lawsuits.

16 II. Res Judicata/Collateral Estoppel

17 Under the doctrine of res judicata, a final judgment on the merits bars further claims by
18 parties or their privies based on the same cause of action. *See Brown v. Felsen*, 442 U.S. 127 (1979).
19 "Pursuant to the rule of claim preclusion, '[a] valid and final judgment on a claim precludes a second
20 action on the claim or any part of it.'" *See Exec Mgmt., Ltd. v. Title Ins. Co.*, 963 P.2d 465, 473
21 (1998) (quoting *University of Nevada v. Tarkanian*, 879 P.2d 1180, 1191 (1994)). Specifically, a
22 federal action may be barred by the doctrine of res judicata where an earlier lawsuit: (1) involved the
23 same claim as the present suit; (2) reached a final judgment on the merits; and (3) involved the same
24 parties or their privies. *See Blonder-Tongue Laboratories v. Univ. of Ill. Found.*, 402 U.S. 313, 323-
25 324 (1971). "[R]es judicata bars not only all claims that were actually litigated, but also all claims
26 that 'could have been asserted' in the prior action." *Int'l Union of Operating Engineers- Employers*

1 *Constr. Indus. Pension, Welfare and Training Trust Funds v. Karr*, 994 F.2d 1426, 1430 (9th Cir.
 2 1993) (citing *McClaim v. Apodaca*, 793 F.2d 1031, 1033 (9th Cir. 1986)). Likewise, “[r]es judicata
 3 bars all grounds for recovery that could have been asserted, whether they were or not, in a prior suit
 4 between the same parties on the same cause of action.” *Clark v. Bear Stearns & Co.*, 966 F.2d 1318,
 5 1320 (9th Cir. 2000). “The central criterion in determining whether there is an identity of claims
 6 between the first and second adjudications is whether the two suits arise out of the same transactional
 7 nucleus of facts.” *Frank v. United Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir. 2000) (internal
 8 quotations omitted). Claim preclusion is designed “to force a plaintiff to explore all the facts,
 9 develop all the theories, and demand all the remedies in the first suit.” 18 Charles Alan Wright,
 10 Arthur R. Miller, and Edward H. Cooper, *Federal Practice and Procedure*, § 4408 (2000).

11 Plaintiff is the mortgage loan borrower and owner of the Property that is the subject of all
 12 three suits. MERS and Countrywide are named as Defendants in all three suits.¹ In each suit,
 13 Plaintiff challenges the deed of trust, Defendants’ authority to foreclose, chain of title, foreclosure
 14 under the deed of trust, the non-judicial foreclosure and origination claims. These constitute the
 15 “transaction nucleus of facts” giving rise to all three suits. *Frank*, 216 F.3d at 851. Judge Mahan’s
 16 dismissal of claims arising from these facts was with prejudice and operated as a final judgment on
 17 the merits.

18 In her Opposition, Plaintiff does not address Defendants’ res judicata argument (#19). Failure
 19 to file points and authorities in opposition to a motion constitutes consent to the granting of the
 20 motion. *See* L.R. 7-2. It appears that Plaintiff may have filed this action because she felt inadequately
 21 represented by her previous counsel. However, since Judge Mahan dismissed Plaintiff’s second
 22 complaint with prejudice, an appeal would have been the correct remedy. Filing a new lawsuit based
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24
 25 ¹ Defendants Mortgageit, Inc. and Chicago Title have been dismissed (#30). Plaintiff named “HBSC Bank” in the
 26 first lawsuit and HSBC Bank USA, N.A. in the second and third lawsuits. However, these entities were never served and
 dismissal is appropriate pursuant to FRCP 4(m). Accordingly, Plaintiff’s claims for relief are only asserted against
 Defendants Countrywide and MERS.

1 on the mortgage and foreclosure of the Property is inappropriate. Accordingly, this action is
2 dismissed.

3 III. Conclusion

4 **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss (#12) is **GRANTED**.
5 DATED this 17th day of July 2012.

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Kent J. Dawson
United States District Judge